

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Jack Roberts, Individually and as Power-
of-Attorney for Barbara Roberts, and
Frank Roberts, Individually,

Plaintiffs,

v.

County of Aiken, Aiken County Sheriff's
Office, Aiken County Emergency Medical
Services, Michael E. Hunt, Individually and in
his Official Capacity as Aiken County Sheriff,
Clay Killian, individually and in his Official
Capacity as Aiken County Administrator,
Jeannie Turner, Individually and in her Official
Capacity as 911 Dispatcher for Aiken County;
and John Does,

Defendants.

No. 1:21-01750-JMC

**CONSENT MOTION FOR LEAVE TO
AMEND COMPLAINT, AMEND
CAPTION, NOTE DEATH, AND TO
SUBSTITUTE PERSONAL
REPRESENTATIVE AS PLAINTIFF**

COME NOW Plaintiffs, by and through the undersigned counsel, and hereby move the Court with consent of Defendant pursuant to Rules 15, 19, and 20 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") for leave to amend his complaint and caption and to substitute as party-plaintiff Jack Roberts, Jr., as Personal Representative for the Estate of Barbara Roberts a/k/a Barbara Ann Roberts, deceased. Pursuant to Fed. R. Civ. P. 25, Plaintiffs also note upon the record the death of Barbara Roberts a/k/a Barbara Ann Roberts during the pendency of this action and seek the right to proceed in favor of Jack Roberts, Jr., the Personal Representative of the Estate of Barbara Roberts a/k/a Barbara Ann Roberts, in accordance with S.C. Code Ann. § 15-5-90. The proposed Amended Complaint and Caption is attached hereto as **Exhibit A** and is incorporated by reference. In support of this motion, Plaintiffs show the Court as follows:

1. Plaintiffs bring this motion to substitute Plaintiff Jack Roberts, Jr. as Personal Representative for the Estate of Barbara Roberts a/k/a Barbara Ann Roberts, deceased, whose care and treatment is and has always been the subject of the pending action.

2. After bringing this civil action, Barbara Roberts a/k/a Barbara Ann Roberts passed away on June 5th, 2021, at the age of 74.

3. On August 31, 2021, Jack Roberts, Jr., surviving son of Barbara Roberts a/k/a Barbara Ann Roberts, was appointed as Personal Representative of the Estate of Barbara Roberts by the Probate Court of Aiken County, South Carolina. *See **Exhibit B***. As Personal Representative, Jack Roberts, Jr. is authorized to bring claims belonging to his mother in life and belonging to her estate including, but not limited to, pre-death pain and suffering and medical, funeral and burial expenses. S.C. Code Ann. §§ 15-5-90, 15-51-41 and 42. Plaintiffs, therefore, move to substitute Jack Roberts, Jr. as Personal Representative of the Estate of Barbara Roberts as party-plaintiff.

4. Fed. R. Civ. P. 19(a)(1) provides for joinder of persons needed for just adjudication, who are subject to service of process and will not deprive the court of jurisdiction of the subject matter of the action, including persons, who in their absence, “the court cannot accord complete relief among existing parties.” Fed. R. Civ. P. 20 provides for the permissive joinder of parties where “they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.”

5. Fed. R. Civ. P. 25(a)(1) provides that, if a party dies and the claim is not extinguished, the court may order substitution of the proper party. “[T]he action does not abate[] but proceeds in favor of or against the remaining parties. The death should be noted on the record.” Fed. R. Civ. P. 25(a)(2).

6. Further, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

7. Accordingly, Plaintiffs now seek leave to amend their Complaint to substitute Jack Roberts, Jr., as party-plaintiff as Personal Representative of the Estate of Barbara Roberts, deceased. Plaintiffs also seek to amend the caption to correctly reflect the Personal Representative of the Estate of Barbara Roberts.

8. The Court should grant Plaintiffs’ motion to amend and to substitute as party-plaintiff, Jack Roberts, Jr., as Personal Representative of Estate of the Barbara Roberts, deceased, because Defendants are allegedly liable for claims belonging to Plaintiffs’ mother in life and belonging to her estate including, but not limited to, pre-death pain and suffering and medical expenses.

WHEREFORE, based on the foregoing, Plaintiffs respectfully request the Court grant his Motion to file an Amended Complaint and Caption and Substitute the Personal Representative as party-plaintiff, attached hereto as **Exhibit A**.

Respectfully submitted, this the 20th day of January 2022.

WE SO MOVE/CONSENT:

/s/ A. Keith McAlister, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing CONSENT MOTION FOR LEAVE TO AMEND COMPLAINT, AMEND CAPTION, NOTE DEATH, AND TO SUBSTITUTE PERSONAL REPRESENTATIVE AS PLAINTIFF upon opposing counsel by electronic mail and mailed through the United States Postal Service:

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Respectfully submitted, this the 20th day of January 2022.

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